

PLANNING ACT 2008

APPLICATION BY SEGRO PROPERTIES LIMITED FOR A DEVELOPMENT CONSENT ORDER IN RESPECT OF EAST MIDLANDS GATEWAY PHASE 2

ISSUE SPECIFIC HEARING 1

WRITTEN SUMMARY OF ORAL SUBMISSIONS BY PROLOGIS

AND

RESPONSES TO ACTION POINTS 5, 8 & 21

This document provides a written summary of the oral submissions made by Hereward Phillpot KC ("**Counsel for Prologis**"), leading counsel instructed by Howard Bassford of DLA Piper UK LLP, on behalf of Prologis UK Limited and Prologis UK 121 Limited ("**Prologis**") at Issue Specific Hearing 1 held on 11 March 2026.

Please note that due to the alignment with East Midlands Airport ("**EMA**") on many of the matters discussed, where Mark Westmoreland Smith KC ("**Counsel for EMA**") leading counsel for EMA led on submissions with which Counsel for Prologis expressly agreed, those submissions are also summarised below for completeness.

These submissions are summarised with reference to the relevant Detailed Agenda Item under which they were discussed. Where no such items are included below, it can be assumed that Prologis had no submissions to make in relation to these items.

Agenda Item 3: Legal basis of determination of applications

- 1 In terms of the application of sections 104 and 105 of the PA 2008 to the commercial and business development comprised in Part 1 of the dDCO, Prologis and the Applicant are on the same page: the commercial and business development falls to be determined under section 105 as there is no NPS which has effect in relation to it.
- 2 On the position in relation to the highway works, Prologis do not take issue with the Applicant's analysis that the ExP should deal with the matter on both bases – that is, under section 104 and section 105 – but the driving force behind the Part 2 works is the commercial and business development, this should make a material difference to the approach to decision-making. It would be odd if a presumption in favour of the highway works were to apply (as would flow from the NN NPS having effect under section 104) when those works are only needed and are promoted as mitigation for development which does not itself benefit from the policy presumptions that flow from the NN NPS. This question has been picked up further by Action Point 8 published by PINS on 18 March 2026 – Prologis' response to this follows this summary.

- 3 In response to a question from the ExP as to what had happened in the Net Zero Teesside case, it was explained that in that case the ExA had been invited to report on both bases, in order that the Secretary of State, armed with recommendations on both footings, could decide the application as he saw fit depending on what view he took as to where the application fell on either side of the line. This was not a unique approach, but a pragmatic one.
- 4 The ExP then raised concerns regarding the disparity between the structure of the Environmental Statement and the structure of the dDCO, noting that the ES conflates the highway works as a collection whereas the dDCO separates them differently, and queried where the line should be drawn and what the implications were for the basis of assessment. As Prologis understands it, the ES takes all elements of the applications together and is not presented on the basis that one element can come forward without the other.

Agenda Item 5: Relationship between the application for the DCO and that for the MCO

- 5 Please note again that, as Prologis understands, there is not yet a separate assessment of where the MCO works but not the DCO works were being promoted, and what the implications are in those circumstances for the highway works. Prologis will await to see what further material is provided by the applicant in this respect and respond accordingly in writing.

Agenda Item 6: Need and alternatives

Carbon neutral campus and the Section 35 Direction

- 6 The ExP asked the Applicant to explain the carbon neutral campus element of the scheme and how it would be integrated, noting that the Section 35 Direction had directed the EMG2 works into the regime on the basis they include a carbon neutral campus and querying whether its delivery should be secured through the dDCO. The Applicant's Counsel submitted that the carbon neutral campus was not integral to the Section 35 Direction and that its delivery was anticipated through Maersk's 'commitment' to establish its national headquarters on site.
- 7 Counsel for Prologis made two submissions in response:
- 7.1 the reference to Maersk did not appear to be supported by anything in the dDCO which guarantees Maersk will be a feature of the development nor is there a binding contractual obligation before the ExP, and that the purported 'commitment' had no legal effect and should therefore have no bearing on decision-making in those circumstances; and
- 7.2 the Section 35 Direction applies to a particular description of development; if the development as consented does not reflect that description, that raises a question of whether a decision by the Secretary of State to make such a DCO would be *ultra vires*. The direction states that the project comprises "*a logistics and manufacturing hub, including a substantial carbon neutral campus/headquarters including co-located head office functions*" (emphasis added), and if that element is not secured in the DCO there is a real question as to whether the development that would be authorised accords with the direction upon which the Secretary of State's jurisdiction to make a DCO under the PA 2008 depends.

Highway works – need case

- 8 The Applicant confirmed the works were primarily mitigation but that a "*side benefit*" was their contribution to the wider integrated programme of works around Junction 24.
- 9 Prologis is not in a position to comment in detail on the proportionality and justification of the highway works at this stage, as the relevant material has not yet been provided. Prologis reserves its ability to make comment once the material was available.

Alternatives

- 10 The ExP asked the Applicant to address the consequences if the Joint Application were to frustrate delivery of the DCO scheme, and conversely the consequences of not providing the highway works if only the Joint Application was delivered. The Applicant's Counsel submitted that a grant of planning permission on the Joint Application would not constitute a legal bar to the granting of the DCO or to the delivery of development pursuant to it but claimed that there would be comparative losses were the DCO not granted and only the Joint Application proceeded.
- 11 The ExP should note with interest that concession in the context of SEGRO's written representations to the local planning authority in respect of the Joint Application, in which SEGRO had raised concerns about the Joint Application's effect on the DCO process and the deliverability of the DCO, and Prologis's written response to those representations which have been provided separately to the ExP through Prologis' Written Representation.
- 12 Paragraph 3.5 of the Prologis Relevant Representation lists five reasonable alternatives which would result in a multi-developer approach to delivering the EMG2 main site. It is not clear from the application material that the Applicant gave any serious and detailed consideration to these alternatives before seeking draconian powers of compulsory acquisition (noting how this issue of timing is reflected in the way the agenda item is phrased in the past tense). Any or all of those alternatives would be capable of delivering the benefits claimed for the DCO scheme. Prologis's alternative (c), for example, would involve no changes to the development proposed in the DCO and would instead involve the Secretary of State amending Article 7 of the DCO to remove the provision which seeks to displace the default position under section 156 of the PA 2008, namely that the owners of the land benefit from the DCO. Any issues about contributions towards the cost of necessary infrastructure can readily be dealt with through familiar commercial or planning mechanisms commonly used in such situations.
- 13 There is no evidence that the Applicant sought to explore these alternatives in any serious and structured way (either in discussion with Prologis or internally) before deciding that it would try instead to pursue the draconian option of using compulsion to take the land for itself. One would expect the internal decision-making of the Applicant to be probed and tested during the examination in order to assess the case being advanced against the relevant statutory and policy tests.
- 14 On the consequences of not maximising the Freeport designation, the Freeport concept does not include or imply any expectation that development will come forward in one go, or via a single developer, and there is no inherent Freeport benefit in single-developer delivery. The Freeport is expected to be delivered by several independent developers, with the Freeport Board fostering greater collaboration and co-operation. Compulsory acquisition is neither a necessary nor an appropriate part of the Freeport model in circumstances where experienced and capable developers are promoting suitable development in a timely fashion on their own land.
- 15 If the Joint Application was delivered within the Freeport window, it would be a very substantial benefit in itself and would not prejudice other parts of the Freeport coming forward. Whilst it was noted that counsel for the Applicant chose to emphasise proximity to the rail terminal, this was not a differentiator that weighed in favour of the DCO scheme rather than the Joint Application scheme. The terminal was equally open to both, and no different or preferential access to the terminal would be available depending on who develops the Prologis/MAG land.
- 16 Counsel for Prologis emphasised the importance when considering these issues of keeping three further points in mind:
- 16.1 There is no certainty that if the DCO is granted the development that it authorises will be delivered, either in full or at all, or that any or all of it would be delivered within the Freeport window. This is a commercial, market-led development, and the likelihood of delivery and its extent and timescales are matters calling for evidence and analysis, and that is currently missing. Any attempted comparison of benefits cannot therefore simply assume how much of the DCO development will come forward, or when.
- 16.2 There is reasonable certainty that if the DCO is granted with powers of compulsory acquisition that would be enough to frustrate delivery of the development proposed in the Joint Application. The adverse public interest consequences associated with that effect of

making the DCO need to be examined and assessed, and that is currently missing in the application material.

- 16.3 The third point flows from the first two, which is that the examination needs to include careful consideration not only of the relative public benefits of the two developments, but also whether there are alternatives which avoid the very significant risk that the Applicant's chosen aggressive approach of immediately resorting to compulsion over co-operation will lead to a lower level of delivery – or even none – within the Freeport window.
- 17 Counsel for EMA submitted that: (1) the assessment of reasonable alternatives in the context of compulsory acquisition is distinct from the assessment in the context of the Environmental Statement, and the existence of a reasonable alternative can undermine the compelling case for CA; (2) the rejection of a multi-developer approach was not justified, as the structure of the Freeport is a series of sites around a broad area and there was never any stated intention for development by a single entity; and (3) the reasons given by the Applicant for there being no reasonable alternatives are not real in-principle issues but rather matters of negotiation. Counsel for Prologis agreed with those submissions.
- 18 The ExP queried whether the viability of the Joint Application went to the heart of whether it was a reasonable alternative. In response it was explained that there is a significant difference in context: SEGRO, not Prologis, has put forward unsupported assertions about viability as a key element of its positive case to seek to justify compulsory acquisition. The Applicant's Statement of Reasons contains both an unsupported assertion that development of the southern land is not viable and an implicit assertion that the DCO scheme is viable, yet no viability evidence had been put forward to substantiate either position. None of those factors applies to the Prologis scheme, as Prologis is not seeking to justify compulsory acquisition. The different context should not be equated, and it is not open to the Applicant to rule out the reasonableness of an alternative on an evidential basis it has yet to establish. Furthermore, the allegation that the Joint Application is not viable is new and unsupported by coherent and rational reasons, let alone evidence. It is also impossible to reconcile with its argument that acquiring and developing this land as proposed will be enough to overcome the non-viability of developing the southern land, even once it has paid open market value for the Prologis/MAG land.

Agenda Item 7: Traffic and Transport

- 19 Prologis emphasised that it is at a disadvantage in not being able to comment on these matters at this stage, as the relevant highways material has not yet been provided. The position set out in Prologis's letter of 2 February 2026 to PINS and in the Relevant Representation regarding the deficiencies in the highway assessment is maintained, and Prologis will respond substantively once the outstanding material was available for review.

RESPONSE TO ACTION POINT 5

Action by: The applicants, All Interested Parties

To provide a written explanation setting out its justification for the view that the EMG1 development was 'substantially complete' in October 2024. This explanation should address:

- *how the concept of 'substantial completion' applies to a multiphase development, including whether completion should be assessed building by building or at the point of overall site completion*
- *whether the absence of the authorised lower gantry cranes affects the assessment of substantial completion, and if so, how.*

Interested parties are also invited to make comment.

Response:

Prologis reserves its ability to respond to the issues raised by this question once it has had the chance to receive and review the applicant's response.

RESPONSE TO ACTION POINT 8

Action by: The applicants, All Interested Parties

To provide written submissions addressing the following:

1. For the EMG2 project as a whole, whether it should be considered under section 104, section 105, or a 'split' approach; and, if a split approach is considered appropriate, where and how the dividing line should properly be drawn.
2. Whether the distinction between s104 and s105 materially affects the SoS's decision making in this case.
3. How associated development should be treated.
4. What the implications are of the Environmental Statement's structure when compared with the structure of the draft DCO, and how these two should be reconciled.
5. If necessary, submission of revised draft DCO, draft EM and relevant and applicable ES documents

Response:

NB: The text provided at (1) and (2) below is as already included at Section 3 of Prologis' Written Representation, all other text is in addition to that.

1. The legal basis for determining whether an application falls under section 104 or section 105 of the PA 2008 is set out in the *EFW* case¹. Which section applies is determined by whether a National Policy Statement ("**NPS**") 'has effect' in relation to development of the description to which the application relates (section 104(1) PA 2008). As set out in *EFW*, section 35 cannot be used to enlarge the scope of an NPS to include a project for which it was not designed to apply. The scope of the NPS is determined by its terms and only has effect in relation to projects within that scope. In *EFW*, a component of the application was not an NSIP and was brought into the PA 2008 system via a section 35 direction. Hence, it was not one for which any relevant NPS 'had effect' and therefore fell to be determined under section 105 – even though the application embraced both NSIP and non-NSIP elements.

The March 2024 National Networks NPS ("**NN NPS**") postdates *EFW* and reflects its legal effect. Paragraphs 1.3–1.5 make clear that the NPS is designed to have effect in relation to NSIPs on the national road and rail networks in England. Paragraph 1.3 states the SoS "*will use this ... as the primary basis*" for decision-making, reflecting the statutory obligation in section 104 to decide the application in accordance with any relevant NPS unless an exception applies. Critically, paragraph 1.6 of the NN NPS adopts a different approach for development brought into the PA 2008 via a section 35 direction: the NPS is "*likely to be the primary policy*", not "*will be*". This reflects a discretion and the need for a case-by-case judgment as to whether the NPS should be the primary policy. The NPS does not have effect for application pursuant to section 35.

If the DCO Application is for development that accords with the Section 35 Direction (as to which see above) it will fall to be determined under section 105, not section 104. This is because the DCO Application is a business and commercial development and the NPS does not have effect for such applications. A split approach where NSIP elements such as qualifying highway works are determined under section 104 and others under section 105 may arise in hybrid applications, as was the case in *EFW* where the application comprised two distinct projects; one that saw an increase to

¹ *EFW Group Ltd v Secretary of State for Business, Energy And Industrial Strategy*. [2021] EWHC 2697 (Admin)

the capacities of an existing plant without any physical works, and another that involved the development of a new waste-to-energy facility.

The DCO Application is comprised of three sets of works. The first set of works relate to the business and commercial development, the second relate to strategic highway works, and the third to associated development. The principal element of the DCO Application is the business and commercial development. This necessarily forms the driving force behind the highway works and associated development works. The proposed highway works are promoted by the Applicant as mitigation necessitated by the business and commercial development itself. No suggestion has been or could properly be made that the highway works would come forward independently. Whilst some of the proposed highway works may, if considered in isolation, fall within the descriptions of highway works in section 22 of PA 2008 they are not promoted here as independent NSIPs or sought to be justified in their own right. Rather, they are brought forward as facilitating and mitigating infrastructure for the business and commercial development, which itself only falls within the PA 2008 regime by virtue of the Section 35 Direction. The need for those works (and the justification for the adverse impacts to which they give rise) therefore depends entirely on the fate of the principal commercial element of the DCO. That is, of necessity, an important and relevant consideration in the determination of the application for development consent for those works to which significant weight must attach.

2. This distinction matters for the purposes of the SoS' decision making and for the examination. Under section 104, the SoS is required to decide the application in accordance with any relevant NPS unless one of the statutory exceptions applies. This creates a presumption in favour of consent where the NPS supports the proposal. Under section 105, there is no such presumption. The SoS must have regard to any matters that are "important and relevant", including the NPS, but is not bound to follow it.

In the context of EMG2, this means the applicant, SEGRO, must justify the business and commercial component of the project to the SoS on its own merits, without the benefit of a statutory or policy presumption in favour. The mere inclusion within the DCO Application of works which might fall within the scope of the NN NPS does not of itself determine the legal basis of decision-making for the application as a whole. Hence, neither the project as a whole nor the principal commercial element could properly benefit from the presumption that would apply under section 104.

Even if some or all of the proposed highway works are of a description that could, in isolation, fall within the scope of the NN NPS, the hybrid approach within *EFW* must be followed allowing the highway works of the DCO Application to be determined in line with section 104, and the remaining business and commercial development with its associated works determined under section 105.

3. Associated development takes its character from the principal development it serves. Since the Applicant confirmed at ISH1 that in its view Part 3 works (save for Work 16) are associated development for the Part 1 commercial/business development, they fall under section 105 and cannot benefit from any NPS presumption. As to Work 16, Prologis' primary submission is that these should be treated in the same way as the highway works themselves, because ultimately they too are subsidiary to the business and commercial development forming the principal element of the DCO Application.

Beyond the section 104/105 categorisation, the ExP must also scrutinise whether each highway intervention genuinely qualifies as associated development at all under section 115, applying the tests in the AD Guidance (direct relationship, subordination, proportionality, and not an aim in itself) as flagged at paragraphs 13.19–13.23 of the Prologis Relevant Representation.

4. If Prologis' primary submission in this regard is followed, then the environmental effects of the entire DCO Application are assessed together pursuant to section 105. If the *EFW* split approach is followed, the Secretary of State needs to assess environmental effects separately for section 104 and section 105 works. The current ES does not enable that exercise.

The Applicant has acknowledged this and committed to revised documents. Prologis reserves its position but notes the point is one of principle – the assessment must be structured to support legally correct decision-making.

5. Not applicable.

RESPONSE TO ACTION POINT 21

Action by: The applicants, LCC, Prologis, EMIA

Current position and future implications for the proposed development in the context of dualling of the section of road north of the EMG2 site including mechanisms for delivery.

Response:

The grant of planning permission for the Joint Application would not frustrate the potential future delivery of the dualling proposals. As part of developing the evidence base for the Joint Application, an illustrative design has been prepared for the layout of a dual carriageway spanning the northern boundary of the application site between the A453 Finger Farm roundabout (to the east) and the signalised junction of the A453 and airport access (to the west). This layout is appended to this response at Appendix 1 for the benefit of the Examination.

The layout demonstrates that the Joint Application proposal is compatible with the proposed A453 dualling. The land currently controlled by Prologis/MAG including land to the north of the A453, combined with existing highways land, is sufficient to accommodate the dualling scheme. No land in any other ownership would be required to deliver this proposal. The maximum extent of the building footprints proposed within the Joint Application terminates before the land that would be required for dualling, with a landscaping buffer also included to ensure this.

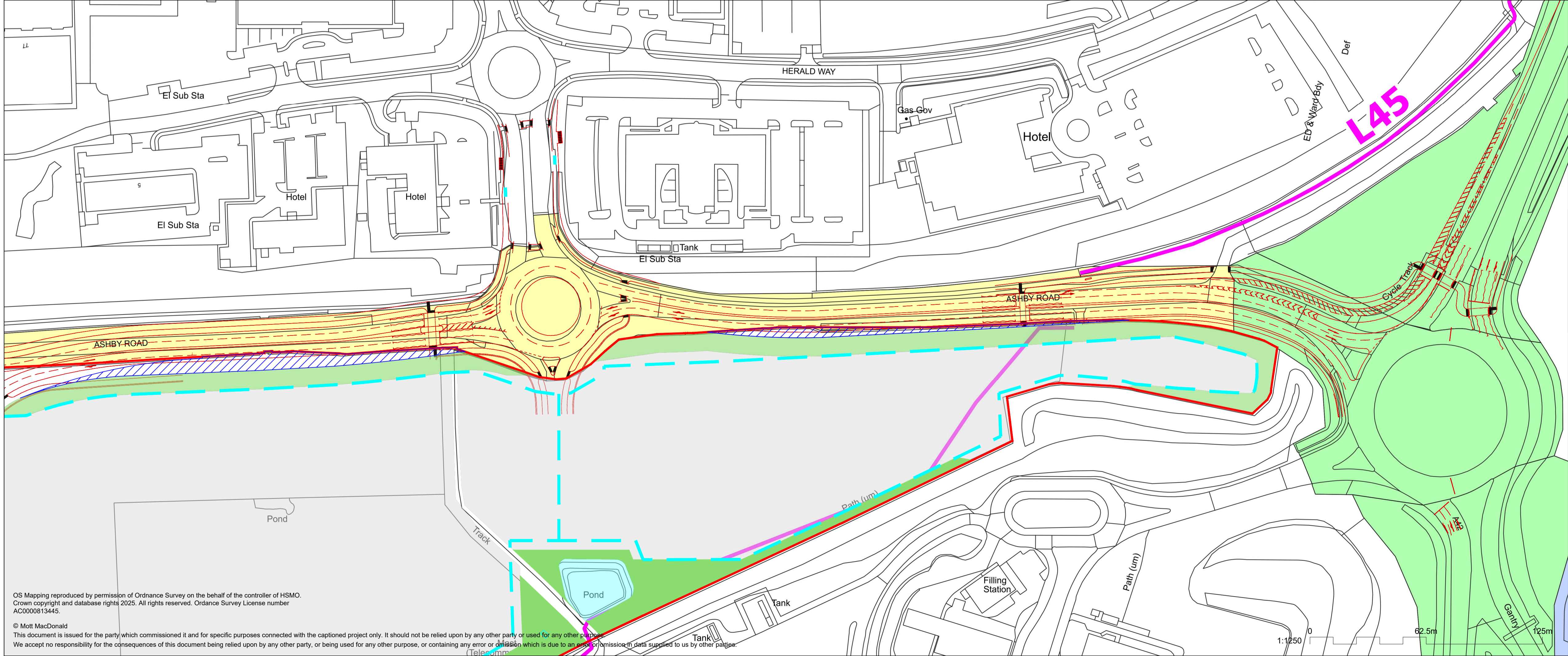
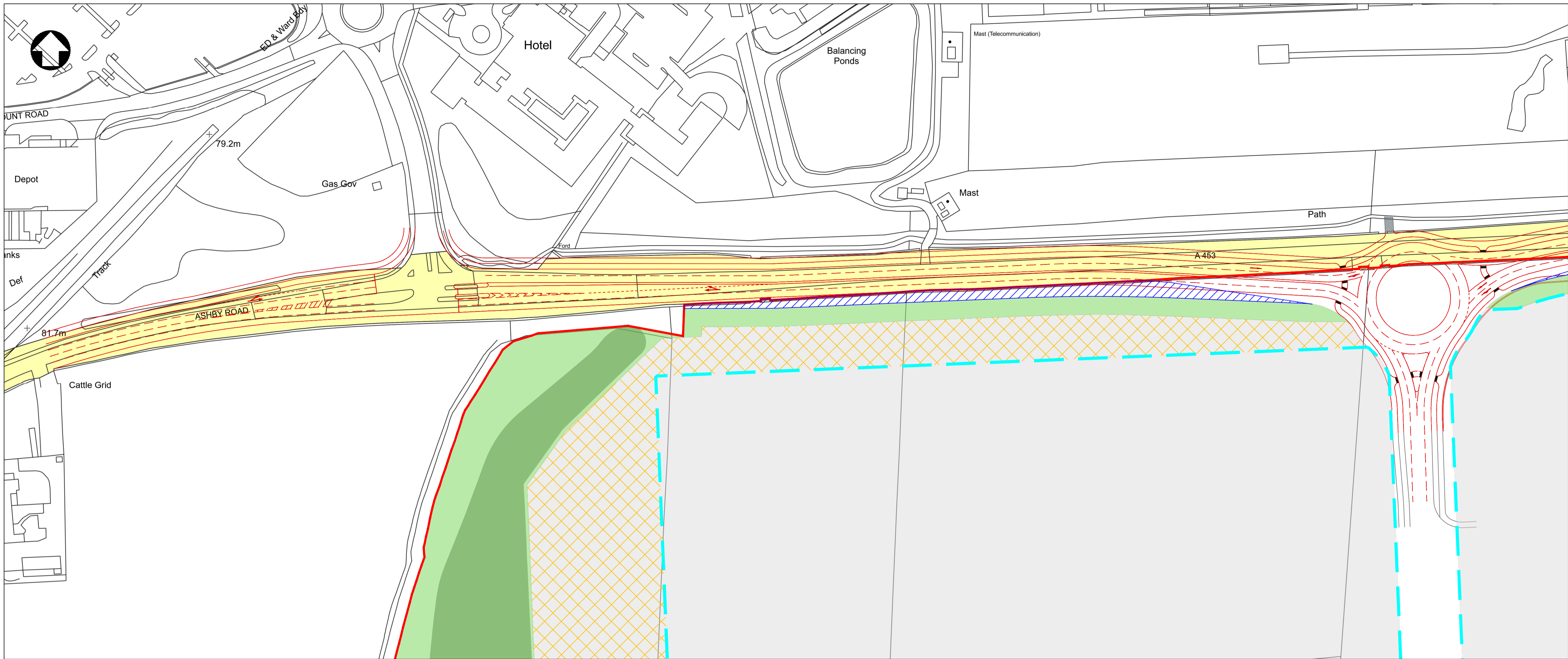
The concept design, which has been presented to Leicestershire County Council for their consideration, further demonstrates how the proposed site access for the Joint Application site and the existing roundabout junction at the A453/Beverley Road would integrate as part of a continuous dual carriageway section to a point west of the Joint Application site, where it would tie back into the existing highway network.

LCC have provided initial comments on these proposals. Whilst commentary on the precise layout and design details would be expected in the ordinary course of further development of the scheme, these proposals clearly demonstrate how the dualling scheme is compatible with and can be delivered alongside the Joint Application development.

Regarding a mechanism for the delivery of dualling, Prologis notes that the A453 dualling is not required to mitigate or address the traffic impacts of the development proposed in the Joint Application. As such, a planning obligation or condition in respect of dualling would not meet the tests under Regulation 122 of the Community Infrastructure Levy Regulations 2010 and it would be inappropriate to require one as part of the decision-making on the Joint Application. It will be for LCC in due course to choose and implement a mechanism for delivery of the dualling scheme if and when it determines such works are required to support the wider growth aspirations of the area. Both the choice and implementation of any such mechanism will be unaffected by any grant of planning permission in response to the Joint Application. However, as per its proposals to LCC, Prologis are willing to engage and ensure that the dualling of the A453 can be delivered.

This raises a further question of relevance to the examination which goes to the consistency of the Applicant's position. If the Applicant is proposing to acquire any Prologis/MAG Land through the exercise of compulsory acquisition powers and then effectively to set that land aside for the purposes of future A453 dualling (rather than for the development proposed in the DCO Application itself) that necessarily engages the question of whether such land is genuinely necessary for the purposes of the DCO development within the meaning of section 122 of the PA 2008. Land set aside for a future highway scheme promoted by a local highway authority, for which no timetable exists and which does not form part of the DCO works, cannot properly be said to satisfy the statutory test for CA. It is unclear whether the Applicant's scheme makes equivalent provision for A453 dualling, and if so, on what basis the compulsory acquisition of Prologis/MAG land for that purpose is said to be justified. The Applicant's position in this regard needs to be reconciled with its suggestion that there is a compelling case in the public interest for it to be granted CA powers over land that may be needed in the future for a different proposed development - namely, the A453 dualling - that does not form part of the DCO Application. Prologis invites the ExP to explore this matter with the Applicant.

Appendix 1



Notes

- All dimensions are in metres unless stated otherwise.
- Do not scale from this drawing.
- Design is based on Ordnance Survey, with commensurate degree of accuracy.
- Dualling and dualled roundabout design is indicative only for spatial provision. Does not include secondary infrastructure or full visibility checks.

Key to symbols

- Illustrative Dualling Design
- Site Boundary
- Zone for Potential Future A453 Improvements (undertaken by others)
- Existing Adopted Highway
- Existing National Highways Land
- Developable Plot
- Zone for Landscaping Buffer
- Earth Bunding
- Restricted Zone
- Maximum Extent of Building Footprints
- Existing Public Right of Way

Reference drawings

P01	25/03/2026	PS	First Issue	MT	MS
Rev	Date	Drawn	Description	Ch'k'd	App'd
MOTT MACDONALD			Mott MacDonald House 8-10 Sydenham Road Croydon, CR0 2EE United Kingdom		
			T +44 (0)20 8774 2000 F +44 (0)20 8681 5706 W mottmac.com		

Client
**Manchester Airport Group Limited
Prologis**

Title
**Land South of A453
East Midlands Airport**
**A453 Dualling Option
Land Requirements**

Designed	S Weston	SW	Eng check	M J Taylor	MT
Drawn	S Weston	SW	Coordination	M J Taylor	MT
Dwg check	M J Taylor	MT	Approved	M Staniland	MS
Scale at A1	1:1250	Status	PRE	Rev	P01
		Security	STD		
Drawing Number			EMA-MMD-HGN-XXX-DR-C-0021		

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